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No. 92-1851

In The

Supreme Court of the United States

October Term, 1992

ROBERT DAILEY and REGGIE LEACH, on behalf of themselves and all others similarly situated,

Petitioners,

vs.

THE NATIONAL HOCKEY LEAGUE, THE NATIONAL HOCKEY LEAGUE PENSION SOCIETY, THE MANUFACTURERS LIFE INSURANCE COMPANY, JOHN ZIEGLER, BOSTON PROFESSIONAL HOCKEY ASSOCIATION INC., CALGARY FLAMES HOCKEY CLUB, CHICAGO BLACKHAWK HOCKEY TEAM, INC., DETROIT RED WINGS, INC., EDMONTON OILERS HOCKEY LTD., 8 HOCKEY VENTURES, INC., HARTFORD WHALERS HOCKEY CLUB, Le CLUB De HOCKEY CANADIEN INC., Le CLUB De HOCKEY LES NORDIQUES, L. A. KINGS, LTD., MAPLE LEAF GARDENS LIMITED, MEADOWLANDERS, INC., NASSAU SPORTS, NEW YORK RANGERS HOCKEY CLUB (A Division of Madison Square Garden Center, Inc.), NIAGARA FRONTIER HOCKEY, L.P., NORTHSTAR HOCKEY CLUB, INC., PHILADELPHIA FLYERS LIMITED PARTNERSHIP, PITTSBURGH PENGUINS, INC., ST. LOUIS BLUES HOCKEY CLUB, LTD., VANCOUVER HOCKEY CLUB, LTD., WASHINGTON HOCKEY LIMITED PARTNERSHIP,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

REPLY BRIEF

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ARGUMENT

Distilled to its essence, respondents' brief argues that this case is so rare that the Third Circuit's decision will not have the far-reaching consequences that petitioners claim. Respondents further urge that this uniqueness precludes any conflict among the circuits as to how *Princess Lida* principles should be applied where doing so will abrogate federally protected rights.

Respondents' overly narrow reading of the facts and law gravely ignores the devastating impact that the Third Circuit's decision will have upon the American worker. Equally important, it allows federal courts to ignore a clear Congressional mandate that *federal* courts exercise exclusive jurisdiction over pension claims to guard important *federal* rights. This Court should review this case to ensure that in the future federal courts will satisfy their obligation to decide ERISA cases over which Congress has mandated exclusive federal jurisdiction.

I. THE THIRD CIRCUIT'S DECISION UNDERMINES CONGRESSIONAL INTENT AND WILL HAVE FAR-REACHING CONSEQUENCES FOR THE AMERICAN WORKER.

Given the reality of the modern global economy, where companies operate across international borders and subject themselves to the laws of the various countries in which they do business, it hardly takes a great amount of prescience to envision a myriad of disputes over ERISA protected benefits between American workers and their foreign-based employers. Moreover, since many such disputes entail the curtailment of these

benefits, it is far from improbable that parallel actions will be filed in more than one national forum. In fact, Congress appears to have anticipated that these concurrent actions would occur when it granted exclusive jurisdiction to the federal courts in ERISA actions – even those involving foreign-based employee benefit plans where the percentage of participants who are American citizens is relatively small. 29 U.S.C. § 1003(b)(4); ERISA Opinion Letter No. 80-5.

Accordingly, to deny American citizens the federal forum mandated by Congress just because an action concerning the same pension plan is filed in a foreign jurisdiction is not only contrary to express Congressional intent, but will also deprive American workers of valuable rights as the global economy continues to integrate according to markets rather than national borders. Congress' mandate of an exclusive federal forum for ERISA disputes would clearly be undermined if this Court were to sanction an international "race to the courthouse."

Not only does the Third Circuit's decision have a potentially wide-spread impact upon pension rights, it also sets a dangerous precedent that would allow federal courts to shirk their responsibility to decide cases over which Congress has vested exclusive federal jurisdiction. When federal courts are allowed to invoke judicially created avoidance principles like *Princess Lida* to eschew jurisdiction, they nullify Congress' ability to act in areas where it believes federal action is warranted. As this Court has recognized on numerous occasions, "[t]he virtually unflagging obligation of the federal courts is to exercise the jurisdiction given to them." *Colorado River Water Conservation District v. United States*, 424 U.S. 800,

817 (1976); *England v. Louisiana State Bd. of Medical Examiners*, 375 U.S. 411, 415 (1964); *McClellan v. Carland*, 217 U.S. 268, 281 (1910); *Cohens v. Virginia*, 6 Wheat. 264, 404 (1821). The Third Circuit's decision here is so contrary to this well-established principle that it must be reversed to ensure that future courts do not follow the Third Circuit's lead.

II. THE THIRD CIRCUIT'S DECISION CONFLICTS WITH THE DECISIONS OF OTHER CIRCUIT COURTS THAT HAVE REFUSED TO UTILIZE JUDICIALLY CREATED AVOIDANCE PRINCIPLES TO DISMISS ERISA ACTIONS.

In addition to arguing that this case is too limited to require this Court's intervention, respondents further claim that the Third Circuit's decision does not create a conflict among the circuits. While petitioners concede that no other court has ruled on *Princess Lida's* applicability to ERISA actions, other circuit courts have steadfastedly refused to dismiss ERISA actions under similar judicially created avoidance principles. The thrust of these prior decisions is clear and in direct conflict with the Third Circuit's decision here: federal courts should not invoke judicially created avoidance principles to dismiss an ERISA action where doing so deprives litigants like petitioners of the only forum available to litigate such claims. *Levy v. Lewis*, 635 F.2d 960 (2d Cir. 1980); *Central State Southeast and Southwest Areas Health & Welfare Fund v. Old Security Life Insurance Co.*, 600 F.2d 671 (7th Cir. 1979); *Marshall v. Chase Manhattan Bank*, 558 F.2d 680 (2d Cir. 1977).

Properly cognizant of ERISA's uniqueness and Congress' mandate of exclusive jurisdiction, these courts were unwilling to dismiss ERISA actions in favor of state court actions that had been filed simultaneously because dismissal would have deprived these litigants of the only forum available to litigate their ERISA claims. As the Second Circuit declared in *Levy v. Lewis*, " . . . federal courts must hear claims within their exclusive jurisdiction, for otherwise, the right alleged would never be fully adjudicated. . . . " *Levy*, 635 F.2d at 967. Since the Third Circuit's decision requiring dismissal of this action under *Princess Lida* is directly contrary to the holdings in *Levy*, *Central States*, and *Marshall*, there is a real conflict among the circuits that must be rectified here.

As each of the courts in *Levy*, *Marshall*, and *Central States* recognized, Congress' vesting of exclusive federal jurisdiction over ERISA claims mandated the rejection of defendants' request for judicial inaction. This is because the court's failure to act in these cases would have deprived plaintiffs of the only forum available to obtain the special relief authorized under ERISA. This is the exact situation here. By court order, plaintiffs are not permitted to litigate their ERISA claims in Canada. To suggest, as respondents now do, that petitioners will not lose their ERISA claims because similar relief is available under Canadian common law ignores Congressional intent.[1] Congress has expressly declared ERISA rights

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[1] Respondents have tried to represent that petitioners would not be disadvantaged by the Canadian courts' refusal to apply ERISA with respect to the disposition of pension "surplus." " . . . ERISA contains no specific provisions dealing with

and remedies to be unique and governed by exclusive federal jurisdiction. Once such a Congressional determination has been made, any comparison of Canadian law with ERISA is irrelevant.

The fact that similar remedies may be available in Canada does not matter one iota. As Judge Alito observed in his dissent below, what matters here is that Congress wanted the NHL pension plan to be governed by ERISA, and the Third Circuit's decision defeats this intent:

> In my view, however, it makes no difference whether Canadian law is similar to or even in some sense better than ERISA. What matters is that Congress wanted ERISA to govern the NHL pension plan, but the majority has frustrated the implementation of that intent.

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pension plan 'surplus.' " *See* footnote 2, Opposition Brief. Indeed, respondents have represented that ERISA's only reference to the disposition of surplus plan assets is the requirement that plan assets be used "for the exclusive benefit" of plan participants, a requirement that is specifically incorporated into the Plan document. Thus Respondents conclude, "[t]his ERISA requirement . . . must be complied with regardless of where these issues are litigated." *See* footnote 2. That is wrong.

Respondents apparently are unaware of the detailed statutory scheme developed by Congress to deal with the allocation of surplus assets on plan termination. 29 U.S.C. § 1344 contains a specific methodology for allocating plan assets upon the termination of a single employer plan. More specifically, 29 U.S.C. § 1344(d) sets forth, in exacting detail, the circumstances under which "residual assets" may be returned to an employer/sponsor of a pension plan. Accordingly, to even suggest to this Court that the mere inclusion of boilerplate "exclusive benefit" language in the Plan document guarantees the petitioners will have their ERISA remedies fully adjudicated is disingenuous at best.

Dailey v. National Hockey League, 987 F.2d 172, 179 (3d Cir. 1993).

Thus, any claimed "similarity" of remedies obtained at the trial court level in Canada is irrelevant in assessing the appropriateness of the Third Circuit's decision. What matters most is that Congress wanted litigants like petitioners to bring their pension plan claims in federal court so that federal courts could develop a uniform body of law for the administration of such plans. The Third Circuit's decision frustrates this goal and is in direct conflict with the decisions of other circuit courts of appeals who have been unwilling to deprive litigants like petitioners of their ability to vindicate their ERISA rights in federal court. Accordingly, a writ of certiorari should be granted to review the Third Circuit's decision and summarily reverse it.[2]

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[2] In its opposition brief, respondents erroneously assert that petitioners concede that *Princess Lida* would be applicable here but for ERISA. On the contrary, petitioners argued that the doctrine was not applicable because it was intended to eliminate conflicts between federal and state courts which is not the situation here. Petition at Page 14-15.

Petitioners join in the additional arguments raised in the Amicus Curiae brief of the National Hockey League Players Association which further demonstrates the inapplicability of *Princess Lida*. While petitioners believe that an analysis of the concepts of *in rem* or *quasi in rem* is unhelpful because of its potential to be wholly result oriented, they believe that the arguments advanced in the Amicus Curiae brief further show that the Third Circuit's application of *Princess Lida* here was erroneous and should be reversed.

CONCLUSION

For the foregoing reasons, as well as those set forth in their initial petition, petitioners respectfully pray that this Court grant their petition for writ of certiorari and reverse the Third Circuit's decision.

Respectfully submitted,

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